

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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|---------------------|---|--------------------------|
| Russell Hurst, Jr., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | C.A. No. N21M-06-020 WCC |
| |) | |
| Kathleen Jennings, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

Submitted: September 2, 2021

Decided: December 15, 2021

Petitioner's Motion to Compel/Rule to Show Cause for Serious Physical Illness, Injury, or Infirmary—DENIED.

Respondent's Motion to Dismiss—GRANTED.

MEMORANDUM OPINION

Russell Hurst, Jr., Sussex Correctional Institution, 23207 DuPont Blvd., Georgetown, DE 19947.

Nicholas D. Picollelli, Jr., Esquire, Deputy Attorney General, Carvel Building, 820 N. French Street, 6th Floor, Wilmington, DE 19801. Attorney for Respondent.

CARPENTER, J.

Before this Court is Petitioner’s Motion to Compel/Rule to Show Cause for Serious Physical Illness, Injury, or Infirmary on his petition seeking writ of mandamus, and Respondent’s Motion to Dismiss the petition. The Court finds that Petitioner fails to state an appropriate claim for mandamus. Accordingly, Petitioner’s Writ of Mandamus will be **DENIED** and Respondent’s Motion to Dismiss will be **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

Russell Hurst, Jr. (“Petitioner”) is currently incarcerated at Sussex Correctional Institution (“SCI”), where he is serving the remainder of his sentence issued in *State v. Russell Hurst, Jr.*¹ Petitioner believes his Eighth Amendment right to be free from cruel and unusual punishment was violated by the Department of Correction’s (“DOC”) conduct in maintaining his Level 5 incarceration during the COVID-19 pandemic.² Petitioner prays for immediate release by default because he asserts that he is “destined to contract the disease with possible fatal results.”³

On June 7, 2021, Petitioner filed a petition labeled as a Writ of Mandamus, Motion to Compel, and Rule to Show Cause for Serious Physical Illness, Injury, or

¹ Pet’r’s Writ of Mandamus/Mot. to Compel/Rule to Show Cause for Serious Physical Illness, Injury or Infirmary, D.I. 1, ¶ 1 (June 7, 2021)(hereinafter “Pet’r’s Mot.”); *See State v. Russell Hurst, Jr.*, C.A. No. 1808014637.

² Pet’r’s Mot. at ¶ 19.

³ *Id.* at p. 6, ¶ 4.

Infirmity.⁴ The named respondent is Kathleen Jennings (“Respondent”), the Attorney General for the State of Delaware.⁵ On July 6, 2021, Respondent filed a Motion to Dismiss pursuant to Superior Court Civil Rule 12(b)(6).⁶ Petitioner filed a reply brief on September 2, 2021.⁷

2. STANDARD OF REVIEW

“Delaware courts have consistently applied the Civil Rule 12(b)(6) legal standard when considering motions to dismiss writ of mandamus petitions.”⁸ On a Motion to Dismiss for failure to state a claim under Superior Court Civil Rule 12(b)(6), all well-pled allegations in the complaint must be accepted as true.⁹ Even vague allegations are considered well-pled if they give the opposing party notice of a claim.¹⁰ The Court must draw all reasonable inferences in favor of the non-moving party;¹¹ however, it will not “accept conclusory allegations unsupported by specific facts,” nor will it “draw unreasonable inferences in favor of the non-moving party.”¹²

⁴ *Id.* at p. 1.

⁵ *Id.*

⁶ Resp’t’s Mot. to Dismiss, D.I. 4, p. 1 (July 6, 2021)(hereinafter “Resp’t’s Mot.”); *See also* Del. Super. Ct. R. 12(b).

⁷ Pet’r’s Reply Br., D.I. 5, p. 1. (Sept. 2, 2021).

⁸ *Long v. Jennings*, 2021 WL 2134854, at *1 (Del. Super. Ct. May 25, 2021)(citing *Shah v. Coupe*, 2014 WL 5712617, at *1 (Del. Super. Ct. Nov. 3, 2014); *Pinkston v. Del. Dept. of Corr.*, 2013 WL 6439360, at *1 (Del. Super. Ct. Dec. 4, 2013)).

⁹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

¹⁰ *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006)(quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002)).

¹¹ *Id.*

¹² *Price v. E.I. DuPont de Nemours & Co.*, 26 A.2d 162, 166 (Del. 2011).

Dismissal of a complaint under Rule 12(b)(6) must be denied if the Petitioner could recover under “any reasonably conceivable set of circumstances susceptible of proof under the complaint.”¹³

3. DISCUSSION

Before addressing Petitioner’s claims, it appears to the Court that Petitioner has named the wrong party who could resolve his healthcare concerns.¹⁴ However, the Attorney General is the only individual who could order the systematic dismissal or release of inmates, particularly when finding a severe health crisis.¹⁵ Therefore, the Court moves forward with its analysis presuming that Petitioner intended to name the Attorney General to force dismissal of his case due to COVID-19.

“In deciding a motion to dismiss with respect to a petition for a writ of mandamus, this Court must consider the standards a party must meet in obtaining a writ.”¹⁶ “A writ of mandamus is an extraordinary remedy issued by this Court to compel a lower court, agency, or public official to perform a nondiscretionary or

¹³ *Spence*, 396 A.2d at 968 (citing *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952)).

¹⁴ Pet’r’s Mot. at p. 1.

¹⁵ *See State v. Smith*, 809 A.2d 1174, 1176 (Del. Super. Ct. 2002)(“The Attorney General is the chief law officer of the State of Delaware chosen by the citizens of Delaware at a general election held every four years. The office is a constitutional one ‘with broad authority to exercise numerous and varied powers.’ Among the powers conferred by the General Assembly upon the Attorney General is the authority ‘to have charge of all criminal proceedings.’”); *See also* 29 Del. C. § 2504(6).

¹⁶ *Long v. Jennings*, 2021 WL 2134854, at *2 (Del. Super. Ct. May 25, 2021)(citing *Caldwell v. Justice of Peace Court No. 13*, 2015 WL 9594709, at *3 (Del. Super. Ct. Dec. 30, 2015)).

ministerial duty.”¹⁷ “The issuance of a writ is within the Court’s discretion; it is not a matter of right.”¹⁸ To succeed on his request, Petitioner “must demonstrate that: he has a clear legal right to the performance of the duty; no other adequate remedy is available; and the lower tribunal has arbitrarily failed or refused to perform that duty.”¹⁹ “A nondiscretionary or ministerial duty must be ‘prescribed with such precision and certainty that nothing is left to discretion or judgment.’”²⁰ “[I]f the duty is discretionary, the right is doubtful, the power to perform the duty is inadequate or wanting, or if any other adequate remedy exists, then the Petitioner is not entitled to a writ of mandamus.”²¹

Petitioner claims that his Eighth Amendment rights were violated as a result of the DOC’s response to the COVID-19 pandemic.²² Petitioner does not assert that he ever contracted COVID-19, but alleges that “[h]e is most likely among the several PRE-infected offenders destined to contract the disease with possible fatal results.”²³ Petitioner claims his inevitable COVID-19 infection is predicated on the inmates’ general inability to social distance, frequently wash their hands, and maintain

¹⁷ *Allen v. Coupe*, 2016 WL 676041, at *2 (Del. Super. Ct. Feb. 18, 2016)(citing *Brittingham v. Town of Georgetown*, 113 A.3d 519, 524 (Del. 2015)).

¹⁸ *Id.* at *2.

¹⁹ *Nicholson v. Taylor*, 2005 WL 2475736, at *2 (Del. 2005).

²⁰ *Allen*, 2016 WL 676041, at *2.

²¹ *Id.*

²² Pet’r’s Mot. at ¶ 19.

²³ *Id.* at ¶ 4.

sanitary living conditions.²⁴ Petitioner asserts that his potential to contract COVID-19 while at SCI amounts to deliberate indifference of a serious medical need, in violation of his Eighth Amendment rights.²⁵

To start, Petitioner's writ of mandamus is not the proper legal instrument to bring a claim for a violation of constitutional rights. Instead, "the proper remedy...is through a 42 U.S.C. § 1983 action in...District Court."²⁶ Because the appropriate legal remedy for Petitioner's constitutional claim is a § 1983 action, and because such legal remedy is freely available to him, Petitioner has failed to show that he has no other adequate legal remedies available. Therefore, the Court finds that the issuance of a writ would be improper.

Even if Petitioner's Writ of Mandamus was appropriate, he has not established a valid claim under the Eighth Amendment. "The Eighth Amendment proscription against cruel and unusual punishment requires that prison officials provide inmates with adequate medical care."²⁷ To establish an Eighth Amendment deliberate

²⁴ *Id.* at ¶¶ 5-7.

²⁵ *Id.* at ¶¶ 2-5.

²⁶ *Pinkston*, 2013 WL 6439360, at *3 (citing *Washington v. Dept. of Corr.*, 2006 WL 1579773, at *2 (Del. Super Ct. May 31, 2006)); *Parker v. Kearney*, 2000 WL 1611119, at *5 (Del. Super. Ct. Aug. 23, 2000)("[P]etitioner claims various constitutional violations occurred as a result of the denial of his job. The appropriate remedy for these violations is an action pursuant to 42 U.S.C. § 1983. Thus, petitioner has an adequate remedy at law, and the mandamus action is inappropriate.").

²⁷ *Giles v. Kearney*, 516 F. Supp. 2d 362, 369 (D. Del. 2007)(citing *Estelle v. Gamble*, 429 U.S. 97, 103-5 (1976)).

indifference to serious medical need claim, “an inmate must allege (i) a serious medical need and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need.”²⁸

First, Petitioner fails to assert that he had a serious medical need. The Superior Court has found relief is unwarranted when an inmate’s claim relies solely on the risks imposed by the COVID-19 pandemic,²⁹ which is exactly what Petitioner does here.³⁰ Petitioner fails to plead any factual basis alleging that he is currently infected or suffering from COVID-19 or that DOC denied him medical treatment. Such speculative, conclusory assertions are insufficient to maintain an Eighth Amendment claim.

Second, Petitioner fails to identify that DOC was deliberately indifferent to any medical need that may have incurred. “[D]eliberate indifference requires a showing that the official acted willfully or with a subjective recklessness.”³¹ Petitioner must show that prison officials were “aware of facts from which the inference could be

²⁸ *Id.*

²⁹ See *Adams v. Jennings*, 2021 WL 3673239, at *3 (Del. Super. Ct. Aug. 5, 2021)(citing *State v. Desmond*, 2020 WL 7630768, at *2 (Del. Super. Ct. Oct. 21, 2020)(“In *State v. Desmond*, the Superior Court found, when reviewing an inmate’s claim that his incarceration during the COVID-19 pandemic was a violation of his Eighth Amendment rights, that the inmate’s motion did “not indicate that he ha[d] been denied access to medical care or that [DOC]...interfered with any prescribed medical treatment as a result of [DOC]’s response to the COVID-19 pandemic”).

³⁰ Pet’r’s Mot. at ¶ 15.

³¹ *Davis v. Carroll*, 390 F. Supp. 2d 415, 419 (D. Del. 2005)(citing *Pew v. Connie*, 1997 WL 717046, at *4 (E.D. Pa. 1997)).

drawn that a substantial risk of harm exists [to Petitioner], and that they also drew that inference.”³²

Petitioner points to Facebook posts, unidentified News Journal Articles, and makes vague assertions regarding overcrowding and deliberate indifference of prison officials in DOC facilities in an attempt to support a claim of deliberate indifference.³³ Petitioner also baldly suggests that Delaware Legislative and Public Records on House Bills No. 37 and 7 provide the requisite objective and subjective prongs needed to properly assert deliberate indifference because both refer to COVID-19 as a “public health emergency.”³⁴ The Court finds these references to be conclusory in nature and insufficient to support a claim of deliberate indifference. Petitioner has not offered any factual basis for his claim that the DOC has intentionally denied or delayed his access to required medical care in violation of the Eighth Amendment.

The Court appreciates that the Petitioner’s situation is not ideal. But his situation is no different than thousands of other inmates confined in our penal institutions. The Court also recognizes that in spite of the Petitioner’s contentions, the DOC has done an outstanding job in limiting COVID-19 infections within their institutions.

³² *Parkell v. Danberg*, 833 F.3d 313, 335 (3d Cir. 2016)(quoting *Betts v. New Castle Youth Dev. Ctr.*, 621 F.3d 249, 259 (3d Cir. 2010)).

³³ Pet’r’s Mot. at ¶ 18.

³⁴ Pet’r’s Reply Br. at ¶¶ 7, 13.

The pandemic has caused all within the justice community to be challenged in managing the situation. The solution however is not, as suggested by the Petitioner, the widespread release of all inmates as COVID-19 infection is possible regardless of ones living situation.

The Court does not find that the Eighth Amendment affords Petitioner the relief he seeks. For these reasons, the Court finds that Petitioner's Motion lacks merit and fails on the foregoing reasons. Thus, Petitioner's Writ of Mandamus is **DENIED** and Respondent's Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.